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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/661,917 | 09/11/2003 | Robert P. Freese | 9409-3 | 8346 |
| 20792 | 7599 | 04/16/2008 | | EXAMINER |
| MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627 | | | ART UNIT | PAPER NUMBER |

DATE MAILED: 04/16/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|--|------------------------|---------------------|--|
| Notification of Non-Compliant Appeal Brief (37 CFR 41.37) | Application No. | Applicant(s) | |
| | 10/661,917 | FREESE ET AL. | |
| | Examiner | Art Unit | |
| | DABORAH CHACKO DAVIS | 1795 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 31 January 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPPE 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6. The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. Other (including any explanation in support of the above items):

See Continuation Sheet.

/Mark F. Huff/
Supervisory Patent Examiner, Art Unit 1795

ddc

April 10, 2008.

Continuation of 10. Other (including any explanation in support of the above items): (Cont. of 6.) 2, 5, 6, and 7, are checked above due to discrepancies within the Appeal Brief. For e.g.: The "Status of Claims" section and the "Claims Appendix" section state that claims 1, 3-13, and 15-18, are on appeal. However, the "Grounds of Rejection to be Reviewed on Appeal" section does not contain a statement of the 35 U. S. C. 103 (a) rejection of claims 11-13 cited in paragraph no. 4, of the Non-final rejection mailed on October 18, 2007.

Also, claims 7, 9-13, and 15-18, are not argued or presented. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. Any claim argued separately should be placed under a subheading identifying the claim by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See 37 CFR 41.37(c)(1)(vii).

In the "Argument Section", on page 9, an evidence has been submitted viz., an "uncited prior art of record". The Patent No. 7,092,165 to Morris et al., cited for secondary considerations of nonobviousness, the U. S. Patent No. 4,464,030, and the PCT Patent Publication No. WO 99/64929, were not submitted as a prior art of record and/or evidence prior to the filing of an appeal and were not previously considered. All other affidavits or other evidence filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) will not be admitted except as permitted by § 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1). See MPEP 1206 37 CFR 41.33 (d)(2) . .